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3 AZ CORP COMMISSION BEFORE THE ARIZONA CORPORATION COMMISSION  
4 DOCKET CONTROL

5 COMMISSIONERS

6 KRISTIN K. MAYES, Chairman  
7 GARY PIERCE  
8 PAUL NEWMAN  
9 SANDRA D. KENNEDY  
10 BOB STUMP

Arizona Corporation Commission

DOCKETED

JAN - 8 2009

DOCKETED BY

11 In the matter of:

12 SOUTHERN HOMES, L.L.C., an Arizona  
13 limited liability company;

14 CHARLES BRUCE FERGUSON and JANE  
15 DOE FERGUSON, husband and wife,

16 Respondents.

DOCKET NO. S-20610A-08-0438

MOTION TO AMEND NOTICE OF  
OPPORTUNITY FOR HEARING  
REGARDING PROPOSED ORDER TO  
CEASE AND DESIST, FOR RESTITUTION,  
FOR ADMINISTRATIVE PENALTIES, AND  
FOR OTHER AFFIRMATIVE ACTION

17 Pursuant to A.A.C. R14-3-106, the Securities Division ("Division") of the Arizona  
18 Corporation Commission hereby moves for leave to amend the Notice of Opportunity for Hearing  
19 Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties, and for  
20 Other Affirmative Action ("Notice") filed in this action. Amendment of the Notice is necessary and  
21 appropriate in light of additional facts uncovered by the Division during its investigation. This  
22 Motion is supported by the following Memorandum of Points and Authorities. A copy of the  
23 proposed Amended Notice is attached hereto as Exhibit "A."

24 MEMORANDUM OF POINTS AND AUTHORITIES

25 Amendments to formal documents are authorized in these proceedings pursuant to the rules  
26 of practice and procedure before the Commission. A.A.C. R14-3-106(E). These rules of practice  
and procedure "shall be liberally construed to secure [a] just and speedy determination of all matters  
presented to the commission." A.A.C. R14-3-101(B).

1 In this case, amendment is requested to include additional securities offerings the Division  
2 believes to be in violation of the Securities Act. This would permit a more comprehensive  
3 adjudication and would be more expedient and economical for both parties than the Division  
4 bringing a separate action to stop additional offerings by the same parties.

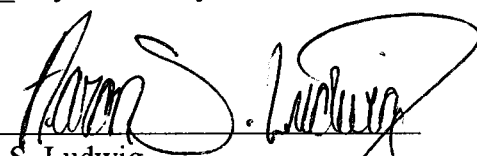
5 Also, the Notice, being a matter of public record, will put the community at large on notice of  
6 the conduct in which the Respondents have allegedly engaged and serve to bring any additional  
7 victims forward. As such, amending the Notice will permit the Division to fulfill its mandate not only  
8 to enforce, but also investigate violations of the Arizona Securities Act.

9 Amending the Notice will not require delaying the already scheduled exchange of exhibits and  
10 witness lists on January 19, 2009 or the hearing dates scheduled to begin on February 17, 2009. The  
11 Division received the documents regarding the additional offerings from Respondents through their  
12 counsel.

13 Finally, the Division requests to amend the caption of the Notice to reflect that Respondent  
14 Charles Bruce Ferguson is a single individual.

15 For the foregoing reasons, the Division requests that the Administrative Law Judge grant  
16 this motion and permit filing of the attached First Amended Notice of Opportunity for Hearing  
17 with an amended caption.

18 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of January 2009.

19  
20   
21 Aaron S. Ludwig  
22 Attorney for the Securities Division of the Arizona  
Corporation Commission

23 **ORIGINAL and 13 COPIES** of the foregoing filed  
this 8<sup>th</sup> day of January 2009 with:

24 Docket Control  
25 Arizona Corporation Commission  
1200 W. Washington St.  
26 Phoenix, AZ 85007

**COPY** of the foregoing delivered  
this 8<sup>th</sup> day of January 2009 to:

The Honorable Marc E. Stern  
Hearing Division  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

Richard L. Klauer  
RICHARD L. KLAUER, P.C.  
301 E. Bethany Home Rd., #C-250  
Phoenix, AZ 85012  
Attorney for Respondents

By: Karen Houli

## COMMISSIONERS

In the matter of:

**SOUTHERN HOMES, L.L.C., an Arizona  
limited liability company;**

**FIRST AMENDED NOTICE OF  
OPPORTUNITY FOR HEARING  
REGARDING PROPOSED ORDER TO  
CEASE AND DESIST, FOR RESTITUTION,  
FOR ADMINISTRATIVE PENALTIES, AND  
FOR OTHER AFFIRMATIVE ACTION**

CHARLES BRUCE FERGUSON, a single individual.

### Respondents.

The Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”)

alleges that SOUTHERN HOMES, L.L.C. and CHARLES BRUCE FERGUSON have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities Act”).

I.

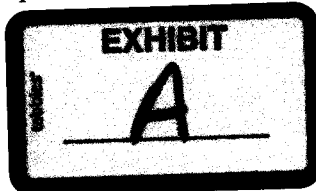
## JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

## II.

## RESPONDENTS

2. SOUTHERN HOMES, L.L.C. is a manager-managed, Arizona limited liability company with a last known principal place of business in Maricopa County, Arizona.



1           3.     CHARLES BRUCE FERGUSON ("FERGUSON"), a single man, is an individual  
2 last known to reside in Maricopa County, Arizona. FERGUSON is a member and the sole  
3 manager of SOUTHERN HOMES.

4           4.     SOUTHERN HOMES and FERGUSON may be referred to collectively as  
5 "Respondents."

6           5.     At all times relevant, Respondents were not registered with the Commission as  
7 securities dealers or salesmen.

### 8                               III.

### 9                               FACTS

10          6.     From on or about December 2005 to June 2008 within or from Arizona,  
11 Respondents offered and sold \$1,177,500 of unregistered securities in the form of investment  
12 contracts and limited liability company membership interests in SOUTHERN HOMES.

13          7.     Between December 2005 and February 2006, Respondents offered and sold  
14 \$165,000 of limited liability company membership interests in SOUTHERN HOMES to seven  
15 Arizona investors (collectively "the Condo Investors"). In exchange for the payment of \$50,000 to  
16 SOUTHERN HOMES by one of the Condo Investors, Respondents gave him a certificate of  
17 ownership of five units of SOUTHERN HOMES.

18          8.     Respondents represented that the Condo Investors' money would be used by  
19 Respondents to purchase an apartment building that would be converted by Respondents into  
20 condominiums to be sold by Respondents for profit that would be distributed to the Condo  
21 Investors. Other than paying Respondents, the Condo Investors had no duties to perform or  
22 responsibilities to fulfill in order to receive their promised profit. In fact, pursuant to the operating  
23 agreement of SOUTHERN HOMES, they were specifically not allowed to act on behalf of or manage  
24 in any way SOUTHERN HOMES.

25          9.     Respondents opened escrow to purchase the apartment building without sufficient  
26 capital to finance the purchase, extended escrow several times, paying additional earnest money

1 each time. On March 22, 2006, Respondents agreed to the forfeiture/payment to the sellers of the  
2 \$100,000 earnest money on deposit with the title company.

3 10. Respondents failed to notify the Condo Investors that the escrow was cancelled and  
4 did not return their remaining investment funds.

5 11. On April 11, 2006 (after the cancellation of escrow), one of the Condo Investors  
6 wrote a letter to FERGUSON listing concerns about his investment and requesting a refund. This  
7 investor received a letter dated April 13, 2006 from "**John A. Kutac**" on what appeared to be the  
8 letterhead of Western Capital Partners, LLC, the prospective lender on the apartment-to-condo  
9 conversion project. The letter addressed the concerns and explained that the project is ongoing,  
10 that FERGUSON spent this investor's money on the project, and that the investment cannot be  
11 refunded. FERGUSON wrote this letter on letterhead he created and he attempted to sign as **John**  
12 **D. Kutac** but he got the middle initial wrong.

13 12. When another one of the Condo Investors contacted FERGUSON requesting a  
14 refund, the investor received from FERGUSON emails purportedly from Mary Fedt of the  
15 Investigations Department of Washington Mutual bank about a fraudulent check that wiped out  
16 Respondents' account, thus preventing the refund. FERGUSON created and sent these fake  
17 emails.

18 13. Even though the Condo Investors were told that their money would be spent only  
19 on the apartment-to-condo conversion project, FERGUSON spent some of their money on  
20 personal expenses.

21 14. Respondents have not provided certain Condo Investors with either their principal  
22 investment or any of the promised profit.

23 15. Between at least August 2006 and February 2008, Respondents offered and sold  
24 \$397,500 of investment contracts to at least 14 investors (collectively "the Program Investors").  
25 The investment contracts with SOUTHERN HOMES had various titles, including Professional  
26 Services Agreement, Joint Venture Agreement, etc. and they purportedly involved various

1 “programs” with names like “humanitarian program,” “5K/10K program,” and “invest 10K and get  
2 30K back in 60 days program.”

3 16. Respondents represented rates of return on these investments ranging from 250% to  
4 1000%.

5 17. FERGUSON deposited at least \$147,500 of the Program Investors’ money into his  
6 personal bank account and spent some of it on personal expenses such as child support, Arizona  
7 Cardinals box seats, and jewelry including a 5+ carat diamond ring.

8 18. Respondents have not provided certain Program Investors with either their principal  
9 investment or any of the promised returns.

10 19. Between February 2008 and June 2008, Respondents sold \$615,000 of investment  
11 contracts to at least three investors (collectively “the Bank Investors”). FERGUSON represented  
12 to one of the Bank Investors that his money would be pooled together with that of other investors  
13 to make up a \$300,000 fee required by a foreign bank to obtain a \$10 million line of credit.

14 20. FERGUSON represented to the Bank Investors that their money would be invested  
15 in a “bank trading platform” and that they would receive a return on their investment payable in 14  
16 to 30 days.

17 21. Respondents provided no documentation whatsoever to one of the Bank Investors  
18 regarding his investment. Respondents provided at least one of the Bank Investors with a  
19 document entitled “Irrevocable Consultant Agreement and Payorder” signed by FERGUSON on  
20 behalf of SOUTHERN HOMES.

21 22. Respondents failed to provide the Bank Investors with disclosures about their  
22 investment including, but not limited to, how the investment would generate the promised return,  
23 and whether there were any risks associated with the investment.

24 23. FERGUSON deposited the Bank Investors’ money into his personal bank account  
25 and spent some of it on personal expenses such as child support and the purchase of a BMW.

26 24. Over \$287,000 of the Bank Investors’ money was used to repay Program Investors.

**(Offer or Sale of Unregistered Securities)**

26. From on or about December 2005 to June 2008 within or from Arizona, Respondents offered and sold securities in the form of investment contracts and limited liability company membership interests.

9           27.     The securities referred to above were not registered pursuant to Articles 6 or 7 of the  
10 Securities Act.

11 28. This conduct violates A.R.S. § 44-1841.

**(Transactions by Unregistered Dealers or Salesmen)**

15           29.     Respondents offered or sold securities within or from Arizona while not registered as  
16     dealers or salesmen pursuant to Article 9 of the Securities Act.

17      30.      This conduct violates A.R.S. § 44-1842.

**(Fraud in Connection with the Offer or Sale of Securities)**

31. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would



operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Misrepresenting to the Bank Investors that their money would be paid to a foreign bank;

b) Assuming the identities of John D. Kutac of Western Capital Partners, LLC and Mary Fedt of the Investigations Department of Washington Mutual then sending a fake letter and false emails as these people to investors; and,

c) Failing to disclose to investors that their money would be deposited into FERGUSON'S personal bank account and spent, at least in part, on his personal expenses.

d) Failing to disclose to the Bank Investors that their money would be used to repay Program Investors.

32. This conduct violates A.R.S. § 44-1991.

## VII.

### REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order any other relief that the Commission deems appropriate.

## VIII.

## ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Aaron S. Ludwig.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this \_\_\_\_ day of January 2009.

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Matthew J. Neubert  
Director of Securities